IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Special Appeal No. 53 of 2005

Dr. Lalit Kumar Sharma S/o Sh.M.B. Sharma,
R/o 45 Bara Bazar, Mallital, Nainital

..... Appellant/ Petitioner

Versus

1. State of Uttaranchal through Secretary Deptt. Of Co-operative Govt. of Uttaranchal
2. Registrar Co-operative Societies, Uttaranchal, Dehradun
3. Additional Registrar, Co-operative Societies, Uttaranchal, Dehradun

..... Respondents

Dated: 22nd February, 2006

Shri Sobhit Saharia and Sri R.K. Raizada, learned counsel for the appellant.
Learned standing counsel for the respondents.

Croam : Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

1. This special appeal arises out against the judgment and order dated 12.07.2005 passed by learned Single Judge in Writ Petition No.234 (S/S) of 2004, Dr. Lalit Kumar Sharma Vs. State of Uttaranchal and others,

2. The learned Single Judge has dismissed the petition of the petitioner by a reasoned order holding that the petitioner was appointed as Group I employee in the Cooperative Drugs & Herbs Development Project under Pharmaceutical Expert and since there is only one post of Pharmaceutical Expert and under the Rules, the same can only be filled by way of direct recruitment through commission, hence the petitioner

has no promotional avenue and he can be granted next higher pay scale after completing 14 years of continuous and satisfactory service as per G.O. dated 02.12.2000. Learned counsel for the appellant challenged this finding that since the petitioner was in the Group-I service, therefore, he was entitled to be promoted as Assistant Registrar, Cooperative Societies. The submission of the learned counsel for the appellant is misconceived. The petitioner/appellant admittedly was appointed as Marketing Intelligence and Public Relation Officer, Group-I, which is one component of the Group-I service for the Cooperative Department.

3. Learned counsel for the appellant further submitted that petitioner was appointed in Group I service in the Department of Cooperative Societies and the employee of Group I Service is eligible to be considered for promotion to the post of Assistant Registrar, Cooperative Societies. Vide Government Order dated 17.12.1987, -75-posts were sanctioned in the project known a Cooperative Drugs & Herbs Development Project. This is a special component of that group of service rules. The next higher post in hierarchy of the project is Pharmaceutical Expert, which was also crated vide government order. The petitioner is a subordinate of the pharmaceutical expert and under Rule 5 of the U.P. Cooperative Service Rules, 1979, source of recruitment of Pharmaceutical Expert is by direct recruitment through Commission. The person appointed Pharmaceutical Expert though was appointed in Group I service is not entitled to be promoted to the post of Pharmaceutical Expert. Since

there is only one post of Pharmaceutical Export and that too can be filled by way of direct recruitment through Commission, therefore the petitioner has no promotional avenue. Rule 5 of the U.P. Cooperative Service Rules, 1979 reads as under:-

5. <u>Sources of recruitment-</u> Recruitment to the various categories of posts in the service shall be made from the following sources:-

(1) Additional Registrar- By promotion, on the basis of merit, in the manner laid down in Rule 18(1) of these rules from amongst the permanent Deputy Registrars who have put in a minimum of five years service as Deputy Registrar on the first day of the year of recruitment.

(2) Deputy Registrar – By promotion, on the basis of seniority subject to rejection of unfit, in the manner laid down in Rule 18(1) of these rules, from amongst permanent Assistant Registrars who put in a minimum of 5 years' service as Assistant Registrar on the first day of the year of recruitment.

(3) Processing Advisor- By direct recruitment through the Commission.

(4) Agriculture Officer- By direct recruitment through the Commission.

(6) Assistant Registrar- (i) By promotion, on the basis of merit, from amongst the members of the Subordinate Co-operative Service, Group-I, who have put in minimum of 5 years' service as such on the first day of the year of recruitment.

(ii) By direct recruitment through the Commission:

Provided that the recruitment to the posts of Assistant Registrars shall be so arranged that, as far as possible, 50 per cent of the posts are held by promotee and 50 percent by direct recruits.

(6) Pharmaceutical Expert- By direct recruitment through the Commission
(7) Refrigeration Engineer- By direct recruitment through the Commission.

(8) Officer Incharge Co-operative Returns- By direct recruitment through the Commission.

4. From the perusal of the aforesaid rule, it is clear that the 50% post of the Assistant Registrar are to be filled up by promotion from amongst the member of Subordinate Cooperative Service Group-I and 50% of the posts are to be filled up through direct recruitment by Commission. The U.P. Cooperative Service Rules 1979 defines the Cooperative Subordinate Service Rules, 1979, which also consists of the Cooperative Inspectors. Cooperative Inspectors of Group-I has been defined in Clause 3(1), which provides that the Cooperative Inspector Group-I includes District Cooperative Officer and Additional District Officer. A "member of service" means a person appointed under the provisions of these rules or of the rules or orders in force prior to the commencement of these rules to a post in the cadre of the service.

5. Admittedly, the petitioner was appointed against the post of Marketing Intelligence and Public Relations Officer and this post was a Group-1 post in the Officers cadre as it comes out from the designation. It does not indicate that this post is created under the Subordinate Cooperative Service Rules, 1979, The Government Order by which the post has been created is not referable to the Cooperative Service Rules, 1979, therefore, the learned Single Judge was completely right in holding that the petitioner cannot be promoted

on the post of Assistant Registrar, Cooperative Societies as he is not a member of the Subordinate Cooperative Service Rules, 1979.

6. Thus, we do not find any illegality or perversity in the judgment of learned Single Judge. The appeal is devoid of merit and is hereby dismissed. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang